

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP.No.47 of 2019

Gnanaselvi

.. Petitioner

Versus

1. State of Tamil Nadu, rep by its
The Secretary to Government
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai.

2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus calling for the records relating to the detention order passed in Memo No.1091/BCDFGISSSV/2018 dated 29.11.2018 by the 2nd respondent under the Tamil Nadu Act 14 of 1982 and set aside the same and direct the respondent to produce the petitioner's husband Thiru.Santhosh Kumar @ Santhosh S/o.Jaganathan, aged about 34 years the detenu, now confined in Central Prison, Puzhal, Chennai before this Court and set the petitioner's husband Thiru.Santhosh Kumar @ Santhosh S/o.Jaganathan, aged about 34 years the detenu herein set him liberty.

For Petitioner : Mr.R.Muthukumar

For Respondents : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the wife of Santhosh Kumar @ Santhosh S/o.Jaganathan, aged 34 years, who is the detenu. The detenu has been detained by the second respondent by his order in

No.1091/BCDFGISSSV/2018 dated 29.11.2018, holding him to be a "GOONDA", as contemplated under Section 2(f) of Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3. Though several grounds have been raised in the Habeas Corpus Petition, the learned counsel appearing for the petitioner would mainly focus his argument on the ground that there is gross violation of procedural safeguards, which would vitiate the detention. The learned counsel, by placing authorities, submitted that the representation made by the petitioner was not considered on time and there was an inordinate and unexplained delay.

4. The learned Additional Public Prosecutor opposed the Habeas Corpus Petition. He would submit that though there was delay in considering the representation, on that score alone, the impugned detention order cannot be quashed. According to the learned Additional Public Prosecutor, no prejudice has been caused to the detenu and thus, there is no violation of the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

5. The Detention Order in question was passed on 29.11.2018. The petitioner made a representation on 02.01.2019. Thereafter, remarks were called for by the Government from the Detaining Authority on 07.01.2019. The remarks were duly received on 11.01.2019. Thereafter, the Deputy Secretary of Home, Prohibition and Excise (XII) Department had dealt with the representation on 11.01.2019 (Column No.12) and the Minister for Electricity & Prohibition and Excise Department dealt with the same on 06.02.2019 (Column No.13). In between column no.12 and column no.13, there was a delay of 25 days in dealing with the said representation and passed the order rejecting the petitioner's representation on 07.02.2019.

6. It is the contention of the petitioner that there was a delay of 25 days in considering the representation by the Government of which 12 days were Government Holidays and hence there was an inordinate delay of 13 days in considering the representation.

7. In *Rekha vs. State of Tamil Nadu* (2011 (5) SCC 244), the Honourable Supreme Court has held that the procedural safeguards are required to be zealously watched and enforced by the Courts

of law and their rigour cannot be allowed to be diluted on the basis of the nature of the alleged activities undertaken by the detenu.

8. In Sumaiya vs. The Secretary to Government (2007 (2) MWN (Cr.) 145), a Division Bench of this Court has held that the unexplained delay of three days in disposal of the representation made on behalf of the detenu would be sufficient to set aside the order of detention.

9. In Tara Chand vs. State of Rajasthan and others, reported in 1980 (2) SCC 321, the Honourable Supreme Court has held that any inordinate and unexplained delay on the part of the Government in considering the representation renders the very detention illegal.

10. In the subject case, admittedly, there is an inordinate and unexplained delay of 12 days in considering the representation by the Government. The impugned detention order is, therefore, liable to be quashed.

11. In the result, the Habeas Corpus Petition is allowed and the order of detention in No.1091/BCDFGISSSV/2018 dated 29.11.2018, passed by the second respondent is set aside. The detenu, namely, Thiru.Santhosh Kumar @ Santhosh S/o.Jaganathan, aged about 34 years, is directed to be released forthwith unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
Department of Home, Prohibition and Excise,
Fort St.George,
Chennai.
2. The Commissioner of Police,
Greater Chennai,
Vepery, Chennai-600 007.
3. The Public Prosecutor
High Court, Madras.

4. The Superintendent,
Central Prison, Puzhal, Chennai.
5. The Joint Secretary to Government,
Public (Law & Order),
Fort. St George,
Chennai - 9.

HCP.No.47 of 2019

MP (CO)
SSM(17/07/2019) .



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